

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAN ZWIJSEN

Appeal No. 1997-0693
Application 08/226,684¹

HEARD: OCTOBER 20, 1999

Before THOMAS, RUGGIERO and HECKER, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's
final rejection of claims 1 through 10, which constitute all
the claims in the application.

¹ Application for patent filed April 12, 1994.

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Representative claim 8 is reproduced below:

8. A dye donor element for use in a thermal printing system using light sources for detecting said dye donor element, comprising one or more dye frames and at least two repetitive detection areas arranged in a margin of said dye donor element along said dye frames and occurring at a regular distance and being either transparent or opaque to light emitted by said light sources.

The references relied on by the examiner are:

Shinma et al. (Shinma)	4,573,059	Feb. 25, 1986
Sparer et al. (Sparer)	4,642,655	Feb. 10, 1987

Claims 1, 3 through 5 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Shinma, whereas claims 2 and 6 stand rejected under 35 U.S.C. § 103 over this same reference.

Additionally, claims 8 through 10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sparer.

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Rather than repeat the positions of the appellant and the examiner, reference is made to the briefs and the answer for the respective details thereof.

OPINION

We reverse the rejection of independent claim 1 and its respective dependent claims under 35 U.S.C. § 102 and 35 U.S.C.

§ 103 in light of Shinma. On the other hand, we sustain the rejection of claims 8 through 10 as being anticipated by Sparer.

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As to the rejection of independent claim 1 under 35
U.S.C.

§ 102 in light of Shinma, this claim requires that the dye donor element have one or more dye frames. The first stated light source illuminates a dye frame and its corresponding first photo detector receives light emitted by this first light source which is recited to pass through the dye frame. Two additional light sources and their corresponding photo detectors are recited to be located in the margin of the dye donor element and responsive to repetitive detection areas in this margin portion of the dye donor element.

We initially reverse this rejection because, as stated by appellant at page 1 of the reply brief, Shinma "fails to teach that one of the source/detection pairs is positioned in the dye frame area rather than in the margin." According to Shinma's teachings and showing in accordance with the Figures 8, 9, 12, 13 and 16, the corresponding markers are located along the length at the edge for only two light source/detector arrangements. The claim requires three of such paired

elements. The Figure 5 embodiment is located only on the single edge utilizing what appears to be only a single light source/detector arrangement. Additionally, there is no indication in any of these embodiments of figures that any light source illuminates a dye frame, per se, such that light passes through it for a detector to sense light of any kind. Thus, for these reasons we must reverse the rejection of independent claim 1 and its respective dependent claims under 35 U.S.C. § 102 and 35 U.S.C. § 103.

Additionally, part of the reasoning advanced by the examiner urging that Shinma anticipates independent claim 1 relates to Shinma's prior art Figure 2. In accordance with the discussion at the bottom of column 1 through the major portion of column 2 of Shinma relating to both prior art Figures 2 and 3 of this reference, on the one hand, while there are three light source/photo detector arrangements disclosed in Figure 2, they are stated at lines 20 through 22 to be "arranged in juxtaposed relationship along a widthwise direction of the ink donor sheet 11." According to the showing in Figure 3 and this teaching, it would thus appear

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that at least all of the light source-photo detector pairs of the arrangement of prior art Figure 2 of Shinma would illuminate a dye frame and pass light therethrough. On the other hand, however, there is no indication in Figures 2 and 3 or in the written description associated with Figures 2 and 3 that any of the light source/detector pairs are located in the margin of the dye donor element as required by claim 1 on appeal. Therefore, for these additional reasons we must reverse the rejection under 35 U.S.C. § 102 of claim 1 on appeal and the rejection of its dependent claims under 35 U.S.C. § 102 and 35 U.S.C. § 103 over Shinma.

We reach a different result as to the rejection of independent claim 8, and, because no features of dependent claims 9 and 10 have been argued by appellant in the brief and reply brief, the rejection of these claims as well. These claims stand rejected as being anticipated under 35 U.S.C. § 102 over Sparer.²

² Though not before us, we note in passing that the earlier noted teachings and showings of Shinma relate directly to the subject matter of independent claim 8 on appeal in a manner consistent with and in some aspects even more illustrative than the subject matter of Sparer.

Appellant presents the same brief argument in the brief at page 7 and reply brief at page 2 as to this rejection by arguing that Sparer "discloses detection areas in a margin of the dye frames (extreme edge), whereas claim 8 requires that the detection areas exist in a margin of the dye donor element." This argument mischaracterizes the actual teaching of Figure 3a shown in Sparer relied upon by the examiner as well as the language in question of claim 8 on appeal. This claim is directed to the dye donor element per se. It is apparent from an inspection of Figure 3a that dye frames for the colors yellow, magenta and cyan are shown and arranged along carrier 14. There are also at least two repetitive detection areas claimed in the form of the cyan dye patch color disposed in the margin, that is, on either side of the carrier 14 in the interframe 14a between the colored dye frames. Therefore, for purposes of claim 8 on appeal, it is apparent that the colored marking areas are located in the margin of the carrier 14, which is analogous to the claimed dye donor element. This claim does not recite that the claimed detection areas be located along side of the dye

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frames of the dye donor element but merely "along said dye frame." Certainly, the showing of Figure 3a shows that they are located along with the dye frames or along the length of the carrier 14 in the interframe areas 14a. Since there is an interframe area 14a between each dye frame color, the viewer may also well consider that an interframe area be associated with each dye frame color and, therefore, additionally interpreted as being along said dye frames. Because the actual markings for the color indicia are of a cyan color, they are opaque for purposes of the end of claim 8 on appeal. Therefore, the rejection under 35 U.S.C. § 102 of this claim is sustained.

In view of the foregoing, we have sustained only the rejection of claims 8 through 10 under 35 U.S.C. § 102. We have reversed the rejection of independent claim 1 and its respective dependent claims under 35 U.S.C. § 102 and 35 U.S.C. § 103.

As such, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR

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§ 1.136(a).

AFFIRMED-IN-PART

	James D. Thomas)	
	Administrative Patent Judge)	
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	Joseph F. Ruggiero)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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	Stuart N. Hecker)	
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